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EXAMINER

NAJARIAN, LENA

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/963,251
Filing Date: September 25, 2001
Appellant(s): KELLY ET AL.

MAILED

NOV 28 2007

GROUP 3600

W. Brinton Yorks, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/9/07 appealing from the Office action
mailed 5/18/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Paragraph 3 in Section VI is incorrect.

The issue is whether claims 1-4, 6-7, and 9-12 stand correctly rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,546,230 (Allison) in view of U.S. Patent 4,539,435 (Eckmann), whether claim 5 stands correctly rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,546,230 (Allison) in view of

U.S. Patent 4,539,435 (Eckmann), and further in view of U.S. Patent 6,149,585 (Gray), whether claim 8 stands correctly rejected under U.S.C. 103(a) as being unpatentable over U.S. Patent 6,546,230 (Allison) in view of U.S. Patent 4,539,435 (Eckmann), and further in view of U.S. Patent 5,065,315 (Garcia), whether claims 13-23 stand correctly rejected under U.S.C. 103(a) as being unpatentable over U.S. Patent 6,546,230 (Allison) in view of U.S. Patent 4,539,435 (Eckmann), and further in view of U.S. Patent Ramshaw (5,791,907).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,546,230	ALLISON	4-2003
4,539,435	ECKMANN	9-1985
6,149,585	GRAY	11-2000
5,065,315	GARCIA	11-1991
5,791,907	RAMSHAW	8-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Exemplary claim 1 recites "a case study presented in a computerized display...." The current claim language does not clarify that a computer processor or structure is part of the recited system.

In particular, the claim does not define any structural and functional interrelationships between the recited "case study" and other elements of a computer, which permit the functionality to be realized. (See MPEP § 2106)

For a claimed invention to be statutory, the claimed invention must also produce a useful, concrete, and tangible result. Under this analysis, the present language of exemplary claim 1 merely recites non-functional descriptive material, as no recitation of executable code being embodied on any medium or data structure is provided. Simply stated, the invention of claim 1 fails to have a tangible result.

In light of the above, it is respectfully submitted that the invention of claims 1-23, does not have a tangible result, and thus fails to recite the practical application of an abstract idea to satisfy the requirements of 35 U.S.C. 101.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited step of exemplary claim 1 of "presented in a computerized display" does not make it clear whether the computer is part of the claim or if all that is claimed is the display on the screen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-7, and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison (US 6,546,230 B1) in view of Eckmann (4,539,435).

(A) Referring to claim 1, Allison discloses a computer based-interactive medical training system (col. 2, lines 1-13 of Allison).

Allison does not expressly disclose a case study presented in a computerized display in a virtual patient chart format for a patient exhibiting a given medical condition, wherein the virtual patient chart format simulates realistic aspects of a patient chart of medical records.

Eckmann discloses a case study presented in a display in a virtual patient chart format for a patient exhibiting a given medical condition, wherein the virtual patient chart format simulates realistic aspects of a patient chart of medical records (col. 4, lines 47-50, col. 5, lines 58-68, and Fig. 1 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Eckmann within Allison. The motivation for doing so would have been to present an educational module that presents realistic patient problems (col. 5, lines 58-68 of Eckmann).

(B) Referring to claim 2, Allison discloses wherein the virtual patient chart further comprises diagnostic reports of a plurality of diagnostic imaging modalities (col. 6, lines 42-51 and col. 2, lines 28-32 of Allison)

(C) Referring to claim 3, Allison discloses wherein the diagnostic reports further comprise diagnostic reports on the given medical condition (col. 1, lines 19-23 of Allison).

(D) Referring to claim 4, Allison discloses wherein the diagnostic reports further comprise diagnostic images from the plurality of diagnostic imaging modalities (col. 2, lines 28-42 of Allison).

(E) Referring to claim 6, Allison does not disclose wherein the virtual patient chart further comprises general medical information on the given medical condition.

Eckmann discloses wherein the virtual patient chart further comprises general medical information on the given medical condition (col. 6, lines 1-9 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Eckmann within Allison. The motivation for doing so would have been to provide pertinent information, such as symptoms associated with the condition, to determine the best course of action (col. 6, lines 1-9 and 33-35 of Eckmann).

(F) Referring to claim 7, Allison does not disclose wherein the general medical information further comprises one or more of typical findings for a given pathology, signs, symptoms, treatment and prognosis for the given medical condition.

Eckmann discloses wherein the general medical information further comprises treatment for the given medical condition (col. 8, lines 37-38 of Eckmann). Insofar as the claim recites "one or more of," it is immaterial whether or not the other elements are also disclosed.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Eckmann within Allison. The motivation for doing so would have been to indicate an acceptable method of treatment (col. 8, lines 37-38 of Eckmann).

(G) Referring to claim 9, Allison discloses a test on the comprehension or application of the information (col. 2, lines 1-13 of Allison).

Allison does not disclose information of the virtual patient chart.

Eckmann discloses information of the virtual patient chart (col. 4, lines 47-57 and col. 6, lines 52-68 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Eckmann within Allison. The motivation for doing so would have been for a student to be tested on how they would diagnose and treat a patient given a certain scenario (col. 6, lines 52-68 of Eckmann).

(H) Referring to claim 10, Allison does not disclose wherein the test comprises a test which is available following review of some or all of the material of the virtual patient chart.

Eckmann discloses wherein the test comprises a test which is available following review of some or all of the material of the virtual patient chart (col. 4, lines 47-58 and col. 5, lines 58-68 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Eckmann within Allison. The motivation for doing so would have been for the physician to be tested when ready (col. 4, lines 53-57 of Eckmann).

(I) Referring to claim 11, Allison does not disclose wherein the virtual patient chart is presented by a computer, and wherein the test is scored by the computer presenting the patient chart.

Eckmann discloses wherein the virtual patient chart is presented by a computer (col. 3, lines 38-40 of Eckmann), and wherein the test is scored by the system presenting the patient chart (Fig. 1, col. 2, line 54 – col. 3, line 5, and col. 6, lines 33-37 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Eckmann within Allison. The motivation for doing so would have been for the interaction to occur at a single location (col. 3, lines 23-30 of Eckmann).

(J) Referring to claim 12, Allison discloses wherein the training is presented by a computer, and wherein the test is scored by a computer connected to the computer presenting the training (col. 10, lines 30-35 of Allison).

Allison does not disclose that the training includes a virtual patient chart.

Eckmann discloses a virtual patient chart (col. 4, lines 47-50, col. 5, lines 58-68, and Fig. 1 of Eckmann).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the features of Eckmann within Allison. The motivation for doing so would have been to present an educational module that presents realistic patient problems (col. 5, lines 58-68 of Eckmann).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allison (US 6,546,230 B1) in view of Eckmann (4,539,435), and further in view of Gray (6,149,585).

(A) Referring to claim 5, Allison and Eckmann do not disclose wherein the diagnostic reports further comprise instruction that a given diagnostic modality is not appropriate or deemed necessary to diagnose the given medical condition.

Gray discloses wherein the diagnostic reports further comprise instruction that a given diagnostic modality is not appropriate or deemed necessary to diagnose the given medical condition (col. 1, lines 46-54 and col. 6, lines 50-64 of Gray).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Gray within Allison and Eckmann. The motivation for doing so would have been to reduce the cost of healthcare (col. 1, lines 45-48 of Gray).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Allison (US 6,546,230 B1) in view of Eckmann (4,539,435), as applied to claim 1 above, and further in view of Garcia (5,065,315).

(A) Referring to claim 8, Allison and Eckmann do not disclose wherein the virtual patient chart further comprises at least one of laboratory reports and pathology specimen pictures.

Garcia discloses wherein the patient chart further comprises laboratory reports (col. 1, lines 16-23 of Garcia). Insofar as the claim recites "at least one of," it is immaterial whether or not the other elements are also disclosed.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Garcia within Allison and Eckmann. The motivation for doing so would have been for all pertinent documents to be included in the patient's file (col. 1, lines 16-23 of Garcia).

Claims 13-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allison (US 6,546,230 B1) in view of Eckmann (4,539,435), and further in view of Ramshaw et al. (5,791,907).

(A) Referring to claim 13, Allison and Eckmann do not expressly disclose a tutorial presented in a computerized display, the tutorial presenting one or more teaching segments of medical information which contain an animation illustrating the medical information being taught.

Ramshaw discloses a tutorial presented in a computerized display, the tutorial presenting one or more teaching segments of medical information which contain an animation illustrating the medical information being taught (col. 2, line 65 – col. 3, line 18, col. 3, lines 50-65, and col. 10, lines 8-10 of Ramshaw).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Ramshaw within Allison and Eckmann. The motivation for doing so would have been to facilitate the learning process (col. 7, lines 31-33 of Ramshaw).

(B) Referring to claims 14-17, Allison and Eckmann do not expressly disclose wherein a teaching segment further comprises a textual passage describing the medical information and an animation illustrating the medical information, wherein the animation comprises an animated graphic, wherein the animation comprises a moving picture, and wherein the textual passage and the animation are viewable on a computer screen without scrolling.

Ramshaw discloses wherein a teaching segment further comprises a textual passage describing the medical information and an animation illustrating the medical information (Fig. 8A and col. 11, lines 47-65 of Ramshaw), wherein the animation comprises an animated graphic (col. 4, lines 2-12 and col. 10, lines 8-10 of Ramshaw), wherein the animation comprises a moving picture (col. 3, lines 6-18 of Ramshaw), and wherein the textual passage and the animation can be seen on a computer screen without scrolling (Fig. 8B of Ramshaw).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Ramshaw within Allison and Eckmann. The motivation for doing so would have been to provide video or visual windows on the display to facilitate the education and training (col. 4, lines 8-12 of Ramshaw).

(C) Referring to claim 18, Allison discloses wherein a teaching segment further comprises a quiz of the medical information taught in the segment (col. 2, lines 1-13 of Allison).

(D) Referring to claim 19, Allison discloses wherein the number of teaching segments is two or more (col. 2, lines 1-13 of Allison).

(E) Referring to claim 20, Allison and Eckmann do not expressly disclose wherein the quiz further comprises a graphic with which a student interacts to demonstrate knowledge of the medical information.

Ramshaw discloses wherein the quiz further comprises a graphic with which a student interacts to demonstrate knowledge of the medical information (col. 3, lines 6-18 and col. 12, line 60 – col. 13, line 13 of Ramshaw).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the aforementioned features of Ramshaw within Allison and Eckmann. The motivation for doing so would have been to for a user to be informed whether the input is correct (col. 3, lines 6-18 of Ramshaw).

(F) Referring to claims 21 and 22, Allison discloses a diagnostic medical image (col. 2, lines 24-42 of Allison) and a clinical application of medical diagnostic imaging (col. 5, lines 47-52 and col. 2, lines 24-42 of Allison).

(G) Referring to claim 23, Allison discloses wherein the medical information comprises operation of medical equipment (col. 2, lines 32-36 of Allison). Insofar as the claim recites “at least one of,” it is immaterial whether or not the other elements are also disclosed.

(10) Response to Argument

In the Appeal Brief filed 9 October 2007, Appellant makes the following arguments:

A) There is no suggestion of a virtual patient chart in Eckmann.

The Examiner will address Appellant’s arguments in sequence as they appear in the brief.

Argument A:

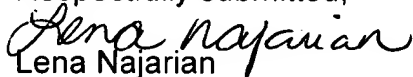
In response to Appellant's first argument, the Examiner respectfully submits that the rejection of claim 1 was based on two references (Allison and Eckmann), not five. Allison teaches a computer-based interactive medical training system (see col. 2, lines 1-13 of Allison). Eckmann teaches simulated patient management problems that include a brief patient history (i.e., a medical patient chart) (see col. 5, lines 60-67 of Eckmann). The Examiner's broadest reasonable interpretation of "virtual patient chart" would include the "patient history" disclosed in Eckmann. In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Lena Najarian

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November 15, 2007

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